

HR Weekly Podcast 05/20/2015

Today is May 20, 2015, and welcome to the HR weekly podcast from the State Human Resources Division. Today's topic concerns a recent Fourth Circuit Court of Appeals ruling in favor of an employer that discharged an employee because of his lengthy history of job performance issues.

In the case of *Arthur v. Pet Dairy*, 63-year-old Ralph Arthur claimed that his discharge violated the Age Discrimination in Employment Act, or the ADEA. Arthur was hired in January of 2003 at the age of 57 as a milk delivery driver and salesman for Pet Dairy's largest and most profitable sales route in Lynchburg, Virginia. Arthur's direct supervisor, Mike Reynolds, joined the company in 2005 and, according to Arthur, Reynolds commented to him that he was too old to be at the company. Arthur further testified that, about three weeks prior to his discharge, Reynolds told him that he needed to "go ahead and hang it up because [he was] just too old to do [his] job."

Arthur's work performance, however, had been under criticism during his employment with Pet Dairy. In 2003, he was issued a written warning after being involved in an accident in which his work truck struck an SUV. That same year, he was also given two formal written reprimands for failing to supply customers with adequate quantities of milk. In a memorandum dated December 4, 2009, the Lynchburg City School Division's director of school nutrition voiced the division's complaints about Arthur's work performance and threatened to end Pet Dairy's account with the school division's food service program. This complaint prompted Reynolds to forward the memorandum to Pet Dairy's HR Department and recommend termination. Based on Reynolds's recommendation and the school division's memorandum, Arthur was terminated.

In 2011, Arthur filed a lawsuit alleging that he had been subjected to age discrimination in violation of the ADEA. The trial judge granted summary judgment to Pet Dairy because Arthur had failed to establish under the ADEA that he was performing his job duties to his employer's legitimate expectations at the time of termination. Arthur appealed his case. The Fourth Circuit agreed with the trial judge, noting the amount of evidence demonstrating that Arthur had frequently failed to meet his employer's expectations. Arthur did not dispute the contents of the memorandum from the school division and, ultimately, the Fourth Circuit decided that Arthur's evidence was insufficient for a reasonable jury to find that he had met his employer's legitimate employment expectations. Accordingly, the Fourth Circuit concluded that the comments made by the supervisor had not been sufficiently related to the discharge and that the employer acted for other lawful reasons, namely the risk of losing its contract with the school division if Arthur had remained on the job. The appellate court found that the evidence at best demonstrated that Arthur's age was simply a motivating factor in Pet Dairy's decision to terminate his employment, but not the "but for" cause of Arthur's termination. Thank you.